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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.711 OF 2007

Prakash Bhagwan Bhekare Petitioner

versus

Bhikaji Vishnu Varik & others Respondents

Mr.A.s.Khandeparkar i/by Khandeparkar & Associates for petitioner.

Mr.V.B.Naik i/by I.M.Khairdi for respondents 1 to 3.

CORAM : A.S.OKA, J.

DATE : 05th April 2007

PC :

1. Heard Shri Khandeparkar appearing for the petitioner. The petitioner is the original plaintiff. According to the case of the petitioner, the respondents are the owners of land on which 140 Mango Grafts are standing. An agreement was entered into by and between the petitioner and the fourth respondent in his capacity as a Power of Attorney Holder of first respondent by which the petitioner agreed to purchase the yield of Mango Garden for a consideration of Rs.1.50 lakh. According to the

case of the petitioner, he was put in possession for the purposes of maintaining the garden. According to him the entire consideration has been paid. As obstruction was raised by the respondents, the petitioner filed a civil suit. In the civil suit the petitioner prayed for perpetual injunction restraining the respondents from preventing the petitioner from taking fruits of 140 Mango Grafts. An application for temporary injunction was filed in the Trial Court which was allowed. The first, second and fourth respondents preferred an appeal in the District Court. By the impugned judgement and order dated 5th January 2007, the said appeal has been allowed and the injunction has been vacated.

2. Shri Khandeparkar appearing for the petitioners submitted that on the basis of the agreement the petitioner was put in possession of the land as he has to look after the garden. He submitted that the agreement was to be effective till end of July 2007. He submitted that as a result of the order passed by the Appellate Court, he will suffer loss and there are no standards for measuring the actual damage which will be caused to the petitioner. He submitted that considering the fact that the entire

consideration has been paid by the petitioner, the Appellate Court ought not to have interfered with the discretionary order of temporary injunction.

3. I have considered the submissions. From the averments made in the plaint it is very difficult to come to the conclusion at this stage that the petitioner was placed in possession of the land on which Mango Grafts are planted. The averment made is that on the basis of the agreement he is looking after the Mango Grafts and has spent amount on keeping the garden clean and for providing the Fertilizers and Pesticides. Under the agreement, it appears that the appellant was to take Mango Fruits. It is obvious that the appellant was to take the fruits for sale in market. Thus, it is obvious that assuming that any wrongful breach is committed by the respondents of the terms of the agreement, the loss which may be caused to the petitioner can always be compensated in terms of money. Thus, apart from a prima facie case, no irreparable loss will be caused to the petitioner if an injunction was not granted. This is not a case where the petitioner can claim any right in respect of the land in question. Hence, no case

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is made out for interference with the discretionary order passed by the Appellate Court. Writ Petition is rejected. It is, however, made clear that all contentions of the parties in the pending suit are expressly kept open. Ad-interim order passed earlier stands vacated.

(A.S.OKA, J.)